

December 29, 2023

U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW MC-4503-T  
Washington, DC 20460

Attention: Clean Water Act § 319 Grant Guidance Update  
Draft Revision for Public Comment of Nonpoint Source Program  
and Grants Guidelines for States and Territories

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to provide comments on the United States Environmental Protection Agency (EPA) proposed updates to the Clean Water Act Section 319 Program “[Draft Revision for Public Comment of Nonpoint Source Program and Grants Guidelines for States and Territories](#)” (NPS Guidelines) document.

DEP offers the following comments on the NPS Guidelines:

- General Comments:
  - EPA should clearly state how the Section 319 Program should coordinate with the [12 EPA Geographic Programs](#) and Other Place-Based Programs, including but not limited to the Chesapeake Bay Program. While Section 4.5.6 of the NPS Guidelines discusses how larger geographic planning documents can be used to support Watershed Based Planning (WBP), it should go into more detail on program coordination to ensure data- and information-sharing, including but not limited to the EPA Grants Reporting and Tracking System (GRTS) reports, approved Nonpoint Source Management Plans, approved Success Stories, and approved Annual Reports.
  - Acronyms list: WB should be WBP for watershed-based plan.
  - Numbers referencing footnotes throughout should be superscripted.
  - EPA regional offices should not interpret the recommendations throughout this guidelines document as program requirements. Training for EPA regions should be a part of the final roll-out of the revised NPS Guidelines.
- Page 4, Second bullet, First indent: DEP supports the opportunity to be able to use project funds for watershed planning and capacity building for environmental justice communities.
- Page 4, Fifth bullet: Pennsylvania and other states are unable to implement some stormwater management and other nonpoint source practices using EPA Section 319 funds because of the inability to use these funds in National Pollutant Discharge Elimination System (NPDES)-permitted areas, such as Municipal Separate Storm Sewer Systems (MS4s) and Combined Sewer Overflows (CSOs). This inability to use Section

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319 funds in NPDES-permitted areas reduces the available grant dollars that could be invested in these communities for projects to ensure climate resiliency and toward meeting NPDES permit requirements using Green Stormwater Infrastructure (GSI).

- Page 20, Section 4.1, Third paragraph: In the Workplan Elements workgroup report published on EPA's website, there is mention of EPA Region 3 being more stringent than Region 4 with WBP development, as well as noting options for developing an alternative plan that have been available in other Regions but not encouraged in Region 3. DEP recommends that the EPA Regions are provided Standard Operating Procedures (SOPs) and training to ensure consistent application of the guidelines.
- Page 20, Section 4.1: EPA's [Handbook for Developing Watershed Plans to Restore and Protect Our Waters](#) should be updated from the 2008 version to incorporate the latest updates to the program as well as new science.
- Page 21, Section 4.3, First bullet, Last sentence: EPA should identify and provide technical guidance, data, tools, and/or training for WBP developers to assist them with incorporating the *"BMPs and measures that can be adapted to a changing climate and have built in flexibility to scale implementation efforts as conditions change."*
- Page 21, Section 4.3, Second bullet: States need greater flexibility and capacity focused toward providing services to environmental justice communities. It currently takes more than 12 months from application (Pre-Award) to the actual award due to the solicitation process and state-federal negotiation, including but not limited to EPA's comment and response period for draft workplans and budgets. Local staff and plans may change during that time, and if the local administrative and technical capacity available during the development of the workplan is not retained, this likely will lead to additional hurdles to implementing the project. EPA should allow for Technical Assistance Grants in the Section 319 Project funding, specifically devoted to capacity building.
- Page 23, Section 4.5.1: There is no mention of the reference watershed approach consistent with the state's Total Maximum Daily Load (TMDL) program. EPA Region 3 requires DEP to include such a statement in WBP development watersheds for which there is no existing TMDL. Consistent guidelines on this subject could help to streamline program requirements.
- Pages 26-30, Section 4.6: DEP recommends that the alternative plan circumstances be expanded to include watersheds where a state's TMDL staff have developed an [advanced/alternative restoration plan \(ARP\)](#). In EPA Region 3, the ARPs are reviewed against an evaluation checklist which is very similar to the evaluation checklist for 9-element WBPs.
- Page 26, Section 4.6: Please clarify why *"EPA will review and approve all alternative plans"* (emphasis added) when there is no formal requirement for EPA to approve WBPs, as stated in Section 2.6 in EPA's [Handbook for Developing Watershed Plans to Restore and Protect Our Waters](#). The approval of the alternative plan as the WBP could then be perceived as approval of the WBP, by reference.

- Page 30, Section 4.7: DEP recommends that EPA provide a recommended time frame (45 days, for example) for EPA to review draft WBPs.
- Page 34, Section 5.2.5: Please clarify if the 10% cap on administrative expenses is passed down to subrecipients, or if it only applies to the total grant amount.
- Page 35, Section 5.3: Rather than require that the workplan identify specific best management practices (BMPs) at specific locations with estimated load reductions, DEP and our subrecipients would benefit substantially if targeted BMP goals and related load reductions overall would be deemed satisfactory by EPA. This would provide flexibility for subgrantees to adjust more rapidly, thereby accelerating project implementation. Current workplan submission and approval requirements make it very difficult for subrecipients to pivot. This is especially important within the Chesapeake Bay watershed, where there is a watershed-wide TMDL and states have been directed to accelerate practice implementation.
- Page 37, Section 5.4: Pennsylvania has more than 40 WBPs. However, the Section 319 Program does not receive many applications on a yearly basis, despite outreach and training. In Pennsylvania, subrecipients apply to the following year's round of Section 319 funding, as the EPA-submitted and negotiated workplans must include all potential subrecipient projects. However, on Page 38 (Table 2), it looks as though the Pre-Award process does not require the review of subrecipient proposals (such as Workplans) by EPA, but rather the state reviews and ranks subaward proposals after Grant Award. The current process required by EPA is overwhelmingly burdensome from an administrative standpoint – DEP has to seek “pre-approval” of the subrecipient projects that were applied for the year prior to award. With limited administrative and technical capacity across the state, including within the Chesapeake Bay watershed and in environmental justice communities, potential applicants can apply to other more accessible and streamlined funding programs. DEP recommends that EPA reevaluate the Pre-Award process to better align it with other EPA funding programs (such as the Chesapeake Bay Regulatory Accountability Program and Chesapeake Bay Implementation Grant) to ensure federal and state goals and objectives are being efficiently and effectively achieved.
- Page 38, Table 2: Pennsylvania loses potential Section 319 applicants because the Pre-Award Process is lengthy and laborious. DEP recommends that EPA reevaluate the level of detail for EPA review and approval of draft workplans and budgets. (See above comment related to workplan negotiations (Pre-Award) versus subrecipient application (Grant Award).)
- Page 42, Section 5.6.2: DEP requests that the statement “*the workplan does not need to be resubmitted and reapproved except to the extent that the state wishes to change it to address new circumstances*” be further clarified and explained. For example, in another EPA grant program, states can make adjustments up to 10% within the line item (“Other”, for example) without having to resubmit the workplan and budget for EPA approval. For Section 319, EPA currently requests that an updated budget and workplan is submitted for their review and approval for every adjustment made. The updates to the

workplans and amendments are tedious for the subrecipient and budget amendments can be administratively labor intensive for the state program and fiscal offices.

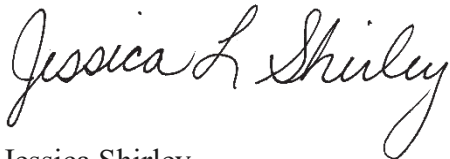
- Page 45, Section 6.3: Include WBP development for environmental justice communities in this section.
- Page 49, Section 6.6: The first paragraph calls attention to the states leveraging other state and federal programs. However, in order to be exempt from the 50% watershed-based project implementation, states need to demonstrate that they are adding to the non-federal match. DEP recommends that other federal programs should be allowed to be leveraged against the 50% requirement, with the state match requirement remaining the same. Understanding that there are billions of dollars in Infrastructure Investment and Jobs Act / Bipartisan Infrastructure Law (IIJA/BIL), Inflation Reduction Act (IRA), and COVID-ARPA funds being directed toward water quality improvement projects, the allowance of states to document the use of federal funds in this demonstration would help to further incentivize practitioners at the state and local levels to strategically and effectively utilize the full breadth of available federal funds in their WBP implementation efforts.
- Page 49, Section 6.6: DEP requests more explanation of what would be expected to be included in the Workplan. For example, would a single state-level workplan (and GRTS entry) for each funding source suffice, or would a separate workplan (and GRTS entry) for each project need to be developed?
- Page 51, Section 7.2.3: DEP recommends that EPA include an example process by which the potential applicant can determine if the proposed GSI is included in the NPDES permit / Pollutant Reduction Plan (PRP).
- Page 56, Section 7.8: Please clarify how the new NPS Guidelines will be incorporated into the existing WBPs. For example, if lake restoration activities will require upland improvements prior to in-lake treatment, then will existing WBPs for lakes need to be revised to meet the NPS Guidelines' criteria? The timeframe for revision, if needed, should be provided in the NPS Guidelines.
- Page 58, Section 7.10: It may be difficult for many of our applicants (including those in environmental justice communities) to describe in the proposed workplan the BMP design considerations related to climate variations. If this will be a required part of the workplan, EPA should provide additional data, tools, and training for potential applicants to use to describe the BMP design considerations related to climate.
- Page 59, Section 8.2: There is no suggestion or requirement mentioned to include the detailed reporting on a subset of the WBPs, which is what Pennsylvania has done as part of our annual reporting to EPA. If the WBPs are already reported via GRTS, it appears from the following excerpt that states would not need to include this reporting as part of the Annual Report: *“The annual progress report should include the following (unless already reported to EPA in grant progress reports, GRTS, etc.)...”*
- Page 93, Appendix B-3, E: Interim measurable milestones are difficult to establish within the short, 5 to 10-year timeframe in which EPA expects the WBPs to be

implemented. WBPs are long-term plans, based on funding commitments and landowner/grantee acceptance and expertise. This is partly due to the 18-month timeframe between grant solicitation and grant award to the subrecipient, partly due to the time that it takes to design and construct each BMP at each site over multiple grant rounds, and partly due to the fact that most BMPs do not result in immediate reductions in pollutant loads. Monitoring must occur long after work is complete to demonstrate water quality improvement and attainment. While 10 years may be a practical amount of time to see incremental improvement, while also using modeling tools like Model My Watershed, it is unlikely for a WBP to be completed in this time frame since existing land use, the size of watershed and/or catchment, the level of impairment, lag time between BMP implantation and water quality improvements, landowner willingness, and other variables all play roles in the ability to complete the WBP. However, we have seen some success in treating Acid Mine Drainage (AMD) watersheds as well as in some of Pennsylvania's Chesapeake Bay counties where progressive efforts are being made to pull in a variety of funding sources and where there is a substantial and focused network of "boots on the ground," and private landowners are willing and able to participate in the state and federal cost-share programs.

- Page 102, Appendix E-2, A.3: States are responsible for the initial entry of projects into GRTS within 90 days of the award; however, EPA must first enter the award information into GRTS. DEP recommends that this be rewritten to state that the initial entry of projects by the states will occur within 90 days after EPA entry of award into GRTS.

DEP appreciates the opportunity to provide comments on EPA's draft revised NPS Guidelines. Should you have questions or need additional information, please contact Jill Whitcomb, Director of DEP's Bureau of Watershed Restoration and Nonpoint Source Management, by e-mail at [jiwhitcomb@pa.gov](mailto:jiwhitcomb@pa.gov).

Sincerely,



Jessica Shirley  
Interim Acting Secretary